

REMARKS/ARGUMENTS

Claims 1-11 are pending in the application. Claims 1-10 are withdrawn. Claim 11 is rejected. Reconsideration and allowance are respectfully requested.

CLAIM REJECTIONS UNDER 35 USC § 102(e)

At pages 2-4 of the Office Action, the Examiner rejected claim 11 under 35 USC § 102(e) as being anticipated by WO 02/089942 A1 (hereinafter, “‘942”). The Applicants respectfully traverse the Examiner’s rejection. As an initial matter, the Applicants do not concede that the ‘942 reference is prior art. The effective filing date under 102(e) of the ‘942 reference is May 2, 2002, merely 6 months prior to the current invention’s priority date of October 17, 2002. The Applicants are investigating its conception date and reserve the right to swear behind the ‘942 reference.

Turning to the merits of the Examiner’s rejection of claim 11 over the ‘942 reference, claim 11 recites in part:

passing along a tubular reactor

- (a) a segmented flow of a supersaturated fluid containing medicament comprised of discrete volumes; or
- (b) a fluid mixture being separated by discrete volumes of a separating fluid which is substantially immiscible with the supersaturated fluid containing medicament,

and initiating crystallization by application of ultrasound.

As discussed in the brief summary of the invention, the application of ultrasound to a tubular reactor with a segmented reaction flow is believed to achieve an improved shape and size of crystals of inhalable medicaments versus prior art techniques. The ‘942 reference does not disclose or suggest a segmented flow or discrete volumes as recited in claim 11. Indeed, the ‘942 reference discloses the exact opposite of segmented flow and discrete volumes of a supersaturated fluid containing medicament, that is, a continuous flow of a liquid containing medicament. This is the type of flow that the Applicants sought to avoid. Therefore, the ‘942 reference fails to include each and every element of

Application No. 10/685,254
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the claimed invention and does not anticipate claim 11 of the invention. In view of the foregoing, the Applicants respectfully submit that claim 11 is in condition for allowance, and request that the Examiner withdraw the subject rejection.

CONCLUSION

In view of the foregoing, the Applicants submit that claim 11 is in condition for allowance. Early and favorable action is earnestly solicited. In the event there are any fees due and owing in connection with this matter, please charge same to our Deposit Account No. 11-0223.

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Respectfully submitted,

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